

ORIGINAL

ANN BAVENDER*
KAREN L. CASSER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
RICHARD J. ESTEVEZ
PAUL J. FELDMAN*
ERIC FISHMAN*
RICHARD HILDRETH
FRANK R. JAZZO
ANDREW S. KERSTING*
KATHRYN A. KLEIMAN
EUGENE M. LAWSON, JR.
HARRY C. MARTIN
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
KATHLEEN VICTORY*
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

FLETCHERHEALD@msn.com

FRANK U. FLETCHER
(1939-1985)
ROBERT L. HEALD
(1956-1983)
PAUL D. P. SPEARMAN
(1936-1982)
FRANK ROBERSON
(1936-1981)
RUSSELL ROWELL
(1948-1977)

RETIRED
EDWARD F. KENEHAN

CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYE
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*

WRITER'S NUMBER
(703) 812-

July 24, 1996

RECEIVED

JUL 24 1996

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: NEW - Channel 38
Sewickley, Pennsylvania

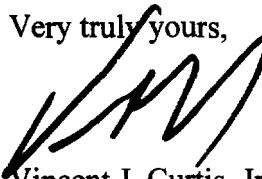
Dear Mr. Caton:

Transmitted herewith are an original and four copies of a Petition for Rule Making to allot Channel 38 to Sewickley, Pennsylvania as its first local transmission television service. A contingent application for construction permit for a new television station to operate on Channel 38 at Sewickley is being transmitted simultaneously under separate cover, and requests for waiver of the contingent application rule and Section 73.607 of the Commission's rules are included in the application.

A request for waiver of the "freeze" imposed by the Commission in Advanced Television Systems and Their Impact on the Existing Television Broadcast Service also is included in the application and in the Petition for Rule Making.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,



Vincent J. Curtis, Jr.

Counsel for Fant Broadcast Development, L.L.C.

Enclosures

No. of Copies rec'd 844
List ABCDE

MMB

RECEIVED

BEFORE THE

JUL 24 1996

Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WASHINGTON, D.C. 20554

In the Matter of)
)
Amendment of Section 73.606(b) of the) MM Docket No. _____
Commission's Rules, TV Table of Allotments,) RM No. _____
to allot Channel 38 to Sewickley, Pennsylvania)

To: Chief, Allocations Branch

PETITION FOR RULEMAKING

Fant Broadcast Development, L.L.C. ("Fant"), by counsel, and pursuant to Section 1.401 of the Commission's rules, hereby requests the Commission to institute a rulemaking proceeding for the purpose of amending the TV Table of Allotments to allot Channel 38 to Sewickley, Pennsylvania, as that community's first local television service.¹ Fant proposes to amend Section 73.606(b) of the Commission's rules as follows

| | <u>Channel No.</u> | |
|-------------------------|--------------------|-----------------|
| <u>City</u> | <u>Present</u> | <u>Proposed</u> |
| Sewickley, Pennsylvania | - - - | 38 |

No change in the existing allotments is requested. In support of this request, the following is stated:

¹ The proposed allotment of Channel 38 at Sewickley is within the freeze zone established by Advanced Television Systems and Their Impact on the Existing Television Service, 52 FR 28346 (published July 29, 1987) ("**Freeze Order**"). Accordingly, attached hereto is a request for waiver of the **Freeze Order**. As explained in greater detail therein, this petition is part of a series of rulemaking petitions and applications for new television stations, many of which request the Commission to waive its **Freeze Order** to permit the allotment of a new television channel and/or the acceptance of an application for a new television station in approximately 40 television markets.

The city of Sewickley, Pennsylvania, is an incorporated community with a 1990 U.S. Census population of 4,134. It has its own post office and zip code, as well as at least one bank and hospital.

As reflected in the attached engineering exhibit, the proposed allotment is short-spaced to the following stations: WNBP-TV, Morgantown, WV; WPCB-TV, Greensburg, PA; WPGH-TV, Pittsburgh, PA; and WNEO-TV, Alliance, OH. However, as demonstrated in the engineering exhibit and accompanying Request for Waiver of Sections 73.610 and 73.698 of the Commission's rules, the short-spacings should not prevent the allotment of Channel 38 to Sewickley because each of the above stations can be protected by utilizing equivalent distance protection.

As stated above, the allotment of Channel 38 will provide Sewickley with a first local television service, which will promote the objectives of Section 307(b) of the Communications Act of providing a fair, efficient and equitable distribution of television broadcast stations among the various States and communities. 47 U.S.C. §307(b). See National Broadcasting Co. v. U.S., 319 U.S. 190, 217 (1943) (describing goal of Communications Act to "secure the maximum benefits of radio to all the people of the United States); FCC v. Allentown Broadcasting Co., 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to "secure local means of expression"). In addition, the proposed allotment will promote the second television allotment priority established in the Sixth Report and Order in Docket Nos. 8736 and 8975, 41 FCC 148, 167 (1952), of providing each community with at least one television broadcast station. The proposed allotment also will permit an additional network to serve the Pittsburgh television market. Therefore, the allotment will serve the public interest.

Contemporaneously herewith, the petitioner is filing an application for a construction permit for the new facility contingent upon the grant of the proposed allotment. In the event its application is granted, the petitioner will promptly construct the new facility.

WHEREFORE, in light of the foregoing, Fant Broadcast Development, L.L.C. respectfully requests the Commission to GRANT this petition for rulemaking, AMEND the TV Table of Allotments, and ALLOT Channel 38 to Sewickley, Pennsylvania, as that community's first local television service.

Respectfully submitted,

FANT BROADCAST DEVELOPMENT, L.L.C.

By: 

Vincent J. Curtis
Anne Goodwin Crump
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Rosslyn, Virginia 22209
(703/812-0400)

July 24, 1996

LIEBERMAN & WALISKO
CONSULTING TELECOMMUNICATIONS ENGINEERS
11403 GILSAN ST.
SILVER SPRING, MD 20902

NEW - Sewickley, Pennsylvania

PETITION FOR RULEMAKING

This is a request to amend the Television Table of Assignments to add channel 38 (0 offset) to Sewickley, Pennsylvania.

The instant proposed channel does not meet the criteria set forth Section §73.698 of the rules but, it does, however, meet the criteria set forth in Section §73.610 of the rules with respect to co-channel and adjacent channel separation. However, as will be demonstrated herein, the channel can be accommodated which will bring a first local television service to the city of Sewickley, Pennsylvania.

Exhibit I is an allocation study for channel 38 using a proposed and known antenna site. The study exhibits short spacing to the following assignments.

| | | |
|------------------------|-------------|----------------|
| WNBP-TV Morgantown, WV | channel 24- | 7.3 km short |
| WPCB-TV Greensburg, PA | channel 40+ | 11.2 km short |
| WPGH-TV Pittsburgh, PA | channel 53+ | 117.2 km short |
| WNEO-TV Alliance, OH | channel 45+ | 4.4 km short |

The short spaced channels are not co-channel or adjacent channels but channels prohibited under Section §73.698 of the rules.

The instant proposal requests the assignment of Channel 38 (0 offset) to Sewickley, Pennsylvania under the umbrella of Equivalent Distance Protection (EDP). EDP sought herein has been employed by the Commission in the past. A case in point is, (1) WHYY-TV, Wilmington, Delaware, BPCT-4290 in 1970 and (2) RM-2018

LIEBERMAN & WALISKO
CONSULTING TELECOMMUNICATIONS ENGINEERS
11403 GILSAN ST.
SILVER SPRING, MD 20902

NEW - Sewickley, Pennsylvania

PETITION FOR RULEMAKING (Cont'd)

in 1980 which provided additional channels of television to Johnstown, PA, Charleston, West Virginia, Knoxville, Tennessee, and Salt Lake City, Utah.

The idea of EDP is based upon the assumption that a proposed station must provide the same ratio of desired-to-undesired signal to the existing station that would be present were the two stations fully spaced. The formula used by the Commission in the past assumes that the protected station is operating at full facilities - maximum height and maximum power.

In the past, the Staff has allowed channel assignments separated at less than the required 31.4 kilometers for two channels removed as long as the respective 115 dBu contours of the two assignments do not cross. In the instant situation, if WPCB-TV were to operate at maximum facilities, the 115 dBu contour would fall at 15.15 kilometers. The total distance between WPCB-TV and the instant propose site is 20.2 kilometers. Thus, under the provision of the 115 dBu rule there remains 5.05 kilometers for a Sewickley 115 dBu contour.

A companion application filed concurrently with this Petition for Rulemaking provides for a directional antenna that produces 354 kilowatts ERP toward WPCB-TV from a height of 296 meters AAT. The allowable to prevent overlap of the respective 115 dBu contours is 370.6 kilowatts.

With respect to WNPB-TV, Morgantown, WV, the instant proposal has determined that channel 38 can operate at Sewickley if the

LIEBERMAN & WALISKO
CONSULTING TELECOMMUNICATIONS ENGINEERS
11403 GILSAN ST.
SILVER SPRING, MD 20902

NEW - Sewickley, Pennsylvania

PETITION FOR RULEMAKING (Cont'd)

proposed channel were to reduce its grade B contour to 99.72 kilometers in the direction of WNPB-TV. Using equivalent contour protection, a fully spaced assignment operating at maximum facilities would place a grade B contour at 107.02 kilometers. Since the instant proposal is short by 7.3 kilometers, the proposed grade B contour would have to be withdrawn by 7.3 kilometers in order to provide equivalent protection to WNPB-TV.

The directional antenna proposed in the companion application provides the requisite protection to Morgantown, WV by reducing the Grade B contour in that direction to 70 kilometers.

WPGH-TV, Pittsburgh, PA operating on channel 53+ is 15 channels above the instant proposed channel 38. Section §73.698 of the rules prohibits an assignment of these channels unless they are separated by 199.9 kilometers in order to protect the picture image of channel 53. The staff has previously granted waivers of this combination where it was demonstrated that the difference of intensity between of the two signals was no less than 6 dB.

The accompanying application to this petition for Rulemaking proposes a site that is just 2.7 kilometers from WPGH-TV. Calculations indicate that levels within 6 dB will be maintained throughout except for 1 kilometer surrounding the WPGH-TV transmitter. In this area, because of the extremely high intensity of radiation from WPGH, the difference between the two signals will be more than 6 dB.

LIEBERMAN & WALISKO
CONSULTING TELECOMMUNICATIONS ENGINEERS
11403 GILSAN ST.
SILVER SPRING, MD 20902

NEW - Sewickley, Pennsylvania

PETITION FOR RULEMAKING (Cont'd)

However, this area represents only 3.1417 square kilometers against a total proposed service area of 20,498.85 square kilometers. The affected area constitutes only 0.0153% of the total proposed service area. Additionally, there is residing within this contour 2,860 people while the population encompassed by the instant proposed Grade B contour is 2,874,467 people. The population residing within the possible interference area is 0.099% of the total population to be served.

With respect to WNEO-TV, Alliance, OH operating on channel 45+, the time has come to recognize that local oscillator interference in television receivers are a thing of the past. Yet, here too, the companion application does provide for equivalent distance protection. A fully spaced maximum facility assignment would place a grade B contour at 107.02 kilometers. The instant application that accompanies this Petition, operating at 5000 kW and a height above average terrain of 296 meters places a grade B contour at 81.2 kilometers which provides ample protection to WNEO-TV.

Looking at the history of Section §73.698, the prohibitions were created in order to afford protections based upon the mixing of multiple signals in an area that would conceivably disturb the received picture in a television receiver. In actuality, the prohibitions were created to deal with the characteristics of the television receivers available at that time. Compared to today's television receiver technology, the television receivers of thirty years ago left a lot to be desired. The prohibitions of Section §73.698 was designed to deal with those deficiencies.

LIEBERMAN & WALISKO
CONSULTING TELECOMMUNICATIONS ENGINEERS
11403 GILSAN ST.
SILVER SPRING, MD 20902

NEW - Sewickley, Pennsylvania

PETITION FOR RULEMAKING (Cont'd)

In 1996, however, such is not the case. Modern television receiver technology relies on electronic tuning using very large scale integrated circuits, varactors, and oscillators that are completely shielded. Thus the need to protect the public from the anomalies present in the 1970's is not present today.

The staff of the Commission has done studies regarding the prohibitions and have concluded that UHF receivers today operate with little or no effect from the prohibited channels - very much like the VHF channels do. A study entitled A Study of UHF Television Receiver Interference Immunities by Hector Davis, FCC/OET, in 1987 indicates that the time has arrived for relieving the broadcaster from Section §73.698.

The petitioner requests, therefore, that Section §73.610 - Television Table of Assignments - be amended as follows:

| <u>City</u> | <u>Present</u> | <u>Proposed</u> |
|---------------|----------------|-----------------|
| Sewickley, PA | None | *38 |

*NOTE: Any application for this assignment shall make a showing that it is protecting Channel 40+ at Greensburg, Pennsylvania to its 115 dBu f(50,50) contour from the proposed 115 dBu f(50,50) contour and reverse.

LIEBERMAN & WALISKO
CONSULTING TELECOMMUNICATIONS ENGINEERS
11403 GILSAN ST.
SILVER SPRING, MD 20902

NEW - Sewickley, Pennsylvania

PETITION FOR RULEMAKING (Cont'd)

Any application for this assignment shall make a showing that a proposed operation on channel 38 shall be operated within 6 dB of the power level of channel 53+ assigned to Pittsburgh, Pennsylvania.

LIEBERMAN & WALISKO
CONSULTING TELECOMMUNICATIONS ENGINEERS
11403 GILSAN ST.
SILVER SPRING, MD 20902

NEW - Sewickley Pennsylvania

EXHIBIT I

TV CHANNEL SPACING STUDY

Title: SEWICKLEY, PA
Channel: 38

Latitude: 40 28 20
Longitude: 79 59 40

| CH | Call | City | ST | Z | STS | Bear. | Dist. | Reqd. Dist. | Result |
|-----|--------|------------|----|---|-----|-------|-------|----------------|--------|
| 52+ | ALLOTM | CUMBERLAND | MD | 1 | | 130.7 | 139.2 | 95.7 | |
| 23- | WATMTV | ALTOONA | PA | 1 | L | 84.8 | 131.8 | 119.9 | 11.9 |
| 24- | WNPBTM | MORGANTOWN | WV | 1 | L | 167.0 | 88.4 | 95.7 | -7.3 |
| 40+ | WPCBTM | GREENSBURG | PA | 1 | L | 116.3 | 20.2 | 31.4 | -11.2 |
| 41o | ALLOTM | WHEELING | WV | 1 | | 234.1 | 76.5 | 31.4 | |
| 45+ | WNEO | ALLIANCE | OH | 1 | L | 302.3 | 91.3 | 95.7 | -4.4 |
| 53+ | WPGHTV | PITTSBURGH | PA | 1 | L | 340.8 | 2.7 | 119.9 | -117.2 |
| 53+ | WPGHTV | PITTSBURGH | PA | 1 | C | 341.3 | 2.7 | 119.9 | -117.2 |
| 53+ | WPGHTV | PITTSBURGH | PA | 1 | A | 341.3 | 2.7 | 119.9 | -117.2 |
| 23+ | WAKCTV | AKRON | OH | 1 | L | 296.7 | 149.4 | 119.9 | 29.5 |
| 23+ | WAKCTV | AKRON | OH | 1 | C | 296.7 | 149.4 | 119.9 | 29.5 |

LIEBERMAN & WALISKO
(CONSULTING TELECOMMUNICATIONS ENGINEERS)
11403 GILSAN ST.
SILVER SPRING, MD 20902

NEW - Sewickley, Pennsylvania

DECLARATION

MELVYN LIEBERMAN, declares and certifies as follows:

That he is associated with the firm of **LIEBERMAN & WALISKO, Inc.;**

That this firm has been retained by **FANT BROADCAST DEVELOPMENT, L.L.C.** to prepare this Engineering Statement;

That his qualifications are a matter of record with the Federal Communications Commission;

That he has either prepared or directly supervised the preparation of all technical material contained in this engineering statement and that the facts stated in this report are true of his knowledge and belief except as to such statements as are herein stated to be on information and belief and as to such statements, he believes them to be true.

July 23, 1996
Date

Melvyn Lieberman
Melvyn Lieberman

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
Amendment of Section 73.606(b) of the) MM Docket No. _____
Commission's Rules, TV Table of Allotments,) RM No. _____
to allot Channel 38 to Sewickley, Pennsylvania)

To: Chief, Allocations Branch

REQUEST FOR WAIVER OF SECTIONS 73.610 AND 73.698

Petitioner hereby seeks a waiver of the Commission's spacing requirements as set forth in Sections 73.610 and 73.698 of the Commission's Rules. This waiver is required in order to allow the addition of a new television station which would provide first local service to Sewickley and the institution of new network service to the Pittsburgh market.

As set forth in the attached engineering exhibit, the proposed allotment and the facilities proposed in the accompanying application would be short-spaced to Station WPCB-TV, Greensburg, Pennsylvania, by 11.2 kilometers and to Station WNPB-TV, Morgantown, West Virginia, Channel 24, by 7.3 kilometers. As demonstrated in the engineering study, however, upon allotment of the requested channel, a new Sewickley station could be authorized to provide Equivalent Distance Protection to WPCB-TV and to WNPB-TV. An application for construction permit proposing use of a directional antenna to provide such protection is being submitted concurrently herewith. The Commission has previously made use of equivalent distance protection in authorizing allotments of new channels. See, e.g., Report and Order in MM Docket No. 20418, 81 F.C.C.2d 233, 259 (1980), recon. denied, 90 F.C.C.2d 160 (1982). As set forth in the engineering statement, the proposed new Sewickley station would provide protection to both WPCB-TV and to WNPB-TV equivalent to that

which would be provided by a fully-spaced station operating with maximum facilities. Therefore, the new Sewickley station is unlikely to cause any actual interference, and the allotment should be made as requested.

Moreover, with regard to WPCB-TV, that station operates on Channel 40, two channels away from the channel proposed for Sewickley. Thus, the required spacing listed in Section 73.698 reflects the UHF "taboo" designed to prevent intermodulation interference. Similarly, the proposed allotment would be short-spaced to WNEO-TV, Alliance, Ohio, by 4.4 kilometers. In this instance, the required spacing listed in Section 73.698 reflects the UHF "taboo" which is designed to prevent local oscillator interference. The Commission has itself questioned the need for these taboos, however. The distance separations contained in Section 73.698 were designed to afford protections based on the mixing of multiple signals that potentially could disturb the reception in television receivers available thirty years ago. Receiver technology has changed dramatically since that time. In a report entitled "A Study of UHF Television Receiver Interference Immunities," OET Technical Memorandum, FCC/OET TM-3, August 1987, the Commission's staff found in a study of 1983 model receivers that UHF performance with regard to both intermodulation interference and local oscillator interference was generally close to the VHF reference. No particular spacing is required for VHF stations operating either two or seven channels apart, and no interference problems have been found. Moreover, since 1983, receiver design has advanced considerably. Since receivers are now electronic, and their components are sealed, local oscillator radiation is no longer the problem it used to be. Modern receivers rely on electronic tuning using large scale integrated circuits, varactors, and shielded oscillators. Thus, the underlying rationale for the UHF taboos no longer exists, and no interference is likely. Since the possibility of actual interference is remote, the proposed

allotment should be made as requested.

Finally, the proposed allotment would be short-spaced to Station WPGH-TV, Pittsburgh, which operates on Channel 53, 15 channels above the channel proposed for Sewickley. As set forth in the attached engineering statement, the Commission's staff has previously waived the required spacing for stations operating 15 channels apart in circumstances similar to those of the proposed allotment. Moreover, the area of any potential interference is quite small, representing only 0.099 percent of the population to be served and 0.0153 percent of the land area to be served.

The purpose of the Commission's spacing rules is to prevent interference between stations. Outlet Co., 11 F.C.C.2d 528 (1968). Taking into account the equivalent distance protection to be afforded and the lack of a continued need for the UHF taboos in question, the proposed allotment would serve the purpose of that rule as well as a fully spaced station. Therefore, since the proposed allotment would fulfill the intent of the spacing rules while at the same time providing the major public interest benefits set forth below, the allotment should be made as requested.

The public interest benefits of the proposed allotment far outweigh any potential detriments. First, the community of Sewickley would gain its first local transmission television service, one of the basic goals of the Communications Act of 1934, as amended (47 U.S.C. §307(b)). Of more far-reaching importance, however, the proposed allotment is part of a larger plan to allow the development of The WB Television Network as a competitive fifth national network. Not only would this development benefit local residents, who would see increased competition and diversity of viewpoints in the television market, but it also would be of national significance.

The Commission has long considered the provision of a new network service in an area to be a factor favoring grant of a waiver of the Commission's spacing rules. Caloosa Television

Corporation, 3 FCC Rcd 3656 (1988); Roy H. Park Broadcasting, Inc., 45 R.R.2d 1083 (B/cast Bur. 1979); Television Broadcasters, Inc. 5 R.R.2d 155 (1965). In this instance, the entire service area of the proposed new station would be receiving WB network service from a full-power broadcast station for the first time.

Moreover, as set forth above, the proposed allotment is part of a series of proposed new stations which each will help ensure the survival and growth of WB by providing the means to compete with the other networks nationwide. The Commission has stated that it is the Commission's "duty to provide, when possible and feasible, the opportunity for effective competition among the networks." Television Broadcasters, Inc. 5 R.R.2d at 160 (emphasis in original). The Commission has waived its spacing rules in order to allow that competition to take place. Id. In Television Broadcasters, the Commission sought to encourage the growth of the ABC network. Given the chance to compete effectively, ABC did emerge as one of the "Big Three" networks. Petitioner now seeks the same opportunity for WB to compete to become an established national network. The proposed allotment is an integral part of that plan.

The Commission has long recognized that implementation of an overall plan which would benefit the public interest may justify short-spacing waivers in individual cases. In Nebraska Educational Television Commission, 4 R.R.2d 771 (1965), the Commission waived its spacing requirements to allow for the prompt implementation of a state-wide plan for educational television. In that case, the Commission found that the implementation of the state-wide plan was an overriding public interest consideration which required waiver of the spacing rules. The cumulative effect of the allotments and stations proposed in this instance would provide similar public interest benefits, but on a nationwide scale. WB can emerge as a new national network only if it is present in the major

markets. Only then can the benefits of greater competition among networks and enhanced diversity of viewpoint be fully realized. Therefore, the public interest clearly demands that the Commission's spacing rules be waived in the instant case. The requested waiver would provide increased diversity in the broadcast television market, both locally, through the allotment of a first local television station, and nationally, through the development of a new network.

REQUEST FOR WAIVER OF ATV "FREEZE"

INTRODUCTION

Petitioner respectfully requests that the Commission grant a waiver of its "Freeze Order"¹ so that it may petition to amend the Television Table of Allotments and apply for a construction permit for Channel 38 in Sewickley, Pennsylvania. In July 1987, the Commission adopted the Freeze Order which temporarily fixed the Television Table of Allotments for 30 designated television markets and their surrounding areas (hereinafter "freeze zones").² The Freeze Order also proscribed construction permit applications for vacant television allotments in these areas.³

By its own terms, however, the Freeze Order envisions waivers "for applicants which provide compelling reasons why this freeze should not apply to their particular situations or class of stations."⁴ Although Sewickley falls within a freeze zone, "compelling reasons" exist for the Commission to waive the freeze.

I. FACTUAL BACKGROUND

This petition and accompanying waiver request are being filed contemporaneously with an application for a construction permit to bring Sewickley its first local television service. The applicant is an entity owned primarily by Anthony Fant, a well-established broadcaster.

¹ *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, RM-5811, 1987 FCC LEXIS 3477 (July 17, 1987), 52 Fed. Reg. 28346 (1987) ("Freeze Order").

² The freeze zones are determined by the minimum co-channel separation requirements set forth in 47 C.F.R. § 73.610 and have radii ranging from 169.5 miles to 219.5 miles for UHF stations depending upon the region of the country in which the proposed station is located.

³ Freeze Order at *2.

⁴ *Id.* at *3. Of course, the FCC is always required to consider waiver requests and is required to grant a waiver when grant of the waiver would better serve the public interest than application of the underlying rule or policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

Simultaneously herewith, Petitioner is filing similar applications in other communities -- many of which also require a waiver of the Freeze Order.

These petitions and accompanying applications are being filed in tandem with a series of other rulemaking petitions and applications, which together cover many of the top 100 markets in which there are no full power stations available to primarily affiliate with The WB Television Network ("The WB"), a network with which the applicants have existing affiliations. The WB has indicated a willingness to enter into affiliation agreements with these applicants in the respective communities should they obtain a license.⁵

To the extent these applicants are able to obtain any of these licenses, the community will also benefit by getting a first local television service,⁶ which will provide viewers in the community -- including children -- with the benefit of receiving another station's programming. And The WB will benefit, by taking another step toward achieving national penetration.⁷ While these benefits -- including The WB's interest in building a nationwide network -- will obviously be maximized if the Commission waives the freeze in as many markets as are requested in these

⁵ We note, in this regard, that there is no commitment on any party's part to enter into such an agreement.

⁶ Indeed, we must concede that this benefit will be achieved by grant of this waiver irrespective of whether the license is ultimately granted to any of these applicants.

⁷ Establishing a nationwide network of affiliates is crucial given that The WB's national advertisers currently require coverage of *at least 80 percent* of the country. The WB's over-the-air broadcast affiliates, however, currently cover only 65% of the country. Cynthia Littleton, *WB, UPN rally the troops*, Broadcasting & Cable, June 10, 1996, at 20. Although The WB's over-the-air coverage is supplemented with superstation WGN(TV)'s cable coverage by approximately 19 percent, this cable coverage is far from equivalent to over-the-air broadcast coverage. This is because one third of all households (approximately 35 million households) do not subscribe to cable, and instead rely upon free television as their sole access to the video marketplace.

applications, the waiver request is not hinged on an all-or-nothing response. Simply stated, the more markets the better -- but each additional market will help.

II. GRANT OF THE WAIVER WILL SERVE THE PUBLIC INTEREST

As the Commission envisioned, in some cases the compelling reasons justifying a waiver will apply at the local level, while in other cases the compelling reasons will apply to a class of stations.⁸ Here, there are compelling reasons at both the local *and* national level, making the grounds for a waiver particularly compelling.

At the local level, grant of the requested waiver would permit Sewickley, Pennsylvania, to have a first local television service. At the national level, this petition and accompanying waiver request are part of a series of rulemaking petitions asking the Commission to allot new channels or reallocate existing channels, the effect of which will be to create many new television stations -- and, correspondingly, more opportunities for a new network like The WB to obtain critical affiliates providing coverage -- in the top 100 markets. As set forth more specifically in the applications filed contemporaneously herewith, the stations will be owned by entities which have indicated their interest in affiliating the stations with The WB, a still incipient, over-the-air television network that currently lacks full power, primary affiliations in the communities specified in these applications.⁹

⁸ Freeze Order at *3.

⁹ Again, however, there is no commitment to affiliate, nor are there any penalties for failure to affiliate.

A. GRANT OF THE REQUESTED WAIVER WILL ACHIEVE MARKET-SPECIFIC PUBLIC INTEREST BENEFITS

Grant of the requested waiver will serve the public interest by providing Sewickley, Pennsylvania, with its first local television service. The Commission has found on at least one occasion that a waiver of the Freeze Order was in the public interest, at least in part, because the proposed reallocation would provide the first local television service to the community.¹⁰ In that case, the Commission noted that the proposed reallocation would promote one of the overarching priorities in the allocation of television channels -- providing at least one local television broadcast station to every community.¹¹

In this case, the allocation of Channel 38 to Sewickley will promote this Commission objective and, at the same time, promote the statutory objective set forth in Section 307(b) of the Communications Act of providing a fair, efficient and equitable distribution of television broadcast stations among the various States and communities.¹² Grant of this waiver request is a necessary first step to bringing a first television station to this community. In and of itself, this presents a compelling justification for waiving the freeze.

¹⁰ *Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations, (Modesto and Ceres, California)*, 6 FCC Rcd 3613 (1991) (non-commercial educational channel).

¹¹ *Id.*; see also *Amendment of Section 3.606 of the Commission's Rules and Regulations; Amendment of the Commission's Rules, Regulations and Engineering Standards Concerning the Television Broadcast Service; Utilization of Frequencies in the Band 470 to 890 Mhz for Television Broadcasting*, 41 FCC 148, 167 (1952) ("Sixth Report and Order").

¹² 47 U.S.C. §307(b). See *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 217 (1943) (describing goal of Communications Act to "secure the maximum benefits of radio to all the people of the United States"); *FCC v. Allentown Broadcasting Co.*, 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to "secure local means of expression").

**B. GRANT OF THE REQUESTED WAIVER WILL ACHIEVE
NATIONWIDE PUBLIC INTEREST BENEFITS**

Waiving the freeze in this and the other communities applied for in this series of rulemaking petitions and applications will also promote significant public interest objectives on a national level. A waiver will advance the Commission's long-standing public interest objective of fostering the growth of new national over-the-air television networks.¹³ And it will enhance broadcast diversity and competition in the local marketplace.

**1. Grant Of The Requested Waiver Will Encourage The Development
Of New National Television Networks**

The Commission has long espoused a commitment to foster the ability of new networks to enter and compete in the television marketplace. As far back as 1941, when the Commission adopted its Chain Broadcasting rules, a primary goal of the Commission was to remove barriers that would inhibit the development of new networks.¹⁴ The Commission explained that the Chain Broadcasting rules were intended to "foster and strengthen broadcasting by opening up the field to competition. An open door to networks will stimulate the old and encourage the new."¹⁵

¹³ See *Report On Chain Broadcasting*, Commission Order No. 37, Docket 5060 (May 1941) at 88 ("Report on Chain Broadcasting"); *Amendment of Part 73 of the Commission's Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting*, 25 FCC 2d 318, 333 (1970); *Fox Broadcasting Co. Request for Temporary Waiver of Certain Provisions of 47 C.F.R. § 73.658*, 5 FCC Rcd 3211, 3211 and n.9 (1990), (citing Network Inquiry Special Staff, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation* (Vol. 1 Oct. 1980)), waiver extended, 6 FCC Rcd 2622 (1991).

¹⁴ *Report on Chain Broadcasting* at 88. Although the Chain Broadcasting rules were originally adopted for radio, they were applied to television in 1946. *Amendment of Part 3 of the Commission's Rules*, 11 Fed. Reg. 33 (Jan. 1, 1946).

¹⁵ *Report on Chain Broadcasting* at 88.

The Commission has remained steadfast in its commitment to its goal of nurturing new networks. The history of the Commission's financial interest and syndication ("finsyn") rules is a case in point. Even as the regulation itself has changed over the last 25 years, the Commission has not wavered from the goal of nurturing new networks. In 1970, when it first adopted the finsyn rule, the Commission noted that "[e]ncouragement of the development of additional networks to supplement or compete with existing networks is a desirable objective and has long been the policy of this Commission."¹⁶ More than two decades later, when the Commission took action first to relax and later to eliminate the finsyn rule, it did so at the behest of the newest network entrant, Fox. Indeed, pending its review of the rule, the Commission granted Fox's request for a limited waiver of the rule.¹⁷ As Commissioner Duggan explained, "Fox has been a bright and innovative force. The existence of a fourth network is certainly in the public interest. . . . Fox deserves to be encouraged."¹⁸ In 1995, in deciding to phase out the finsyn rule entirely, the Commission similarly evaluated the rule's impact on "[t]he overall business practices of emerging networks, such as Fox, in the network television and syndication business . . . [and] [t]he growth of additional networks, including the development of Fox and its position vis-à-vis the three major networks."¹⁹

¹⁶ *Competition and Responsibility in Network Television Broadcasting*, 25 FCC 2d at 333.

¹⁷ *Fox Broadcasting Co.*, 5 FCC Rcd at 3211 (1990).

¹⁸ *Broadcasting & Cable*, May 7, 1990, ed., p. 28; *accord*, *Application of Fox Television Stations, Inc. for Renewal of License of Station WNYW-TV, New York, New York*, 10 FCC Rcd 8452, 8528-29 (1995) (Commissioner Quello stating in his concurring statement, "I believe . . . that the creation of the fourth network was a compelling public interest goal.").

¹⁹ *Evaluation of the Syndication and Financial Interest Rules*, 10 FCC Rcd 12165, 12166 (1995).

Appropriately, the Commission's goal of fostering new networks has not been limited to Fox. When the Commission first expanded its multiple ownership rule, it did so with the stated hope of fostering new networks²⁰ In addition, the Commission has crafted rules and granted a variety of waivers designed to foster the development of new networks over the years. In 1967, for example, the Commission granted a waiver of the dual network rule to ABC -- the then new network entrant -- in connection with ABC's four new specialized radio networks. Although operation of the four networks violated the dual network rule, the Commission nevertheless concluded that waiver of the rule was appropriate because ABC's proposal "merits encouragement as a new and imaginative approach to networking."²¹ The Commission explained that it was "of more than usual importance to encourage to the extent possible innovation and experimentation in the operation of networks."²² In 1981, the Christian Broadcasting Network was granted a limited waiver of both the prime time access and the finsyn rules.²³ The Commission reasoned that a waiver was appropriate because the rules were adopted in part to attempt to ensure the development and growth of other "lesser" organizations.²⁴ The

²⁰ *Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations*, 100 FCC 2d 17, 45 (1984) ("Multiple Ownership") (relaxing restrictions on multiple ownership advances "Commission's diversity goal by providing alternatives to the three television networks"). Although Fox was the first of these alternatives, there has never been, nor should there be, any notion that one alternative was all that was needed.

²¹ *Proposal of American Broadcasting Cos., Inc. to Establish Four New Specialized "American Radio Networks,"* 11 FCC 2d 163, 168 (1967).

²² *Id.* at 165.

²³ *Request of the Christian Broadcasting Network, Inc. for Waiver of Section 73.658(j)(4) of the Commission's Rules*, 87 FCC 2d 1076, 1078 (1981).

²⁴ *Applicability of 47 C.F.R. § 73.658(g) and 47 C.F.R. § 73.658(k) to Home Shopping, Inc.*, 4 FCC Rcd 2422, 2423 (1989) ("Home Shopping").

Commission followed the same line of reasoning in subsequently granting Home Shopping Network waivers of the dual network and prime time access rules. The Commission noted, for example, that simultaneous operation of two Home Shopping networks was “consistent with the Commission’s goals of encouraging alternatives to traditional networking.”²⁵

Most recently, the Commission expressed its continued interest in fostering new networks in proposing to amend various network/affiliate rules. Sprinkled throughout the notice of proposed rulemaking are questions about the impact that the proposed changes could have on the latest entrants, The WB and UPN.²⁶ For example, the Commission queried whether its prohibition on time optioning “might inhibit the growth of new networks.”²⁷ Likewise, in considering whether to eliminate its prohibition on exclusive affiliation, the Commission expressed its concern “that permitting exclusive affiliation in smaller markets might preclude the development of new networks in those markets, thus depriving the public of the benefits of competition and diversity.”²⁸ The Commission’s interest in helping, not harming, new networks is clear.

Although the Commission has noted that it is not the FCC’s function to assure competitive equality in any given market, it has acknowledged its “duty at least to take such actions as will create greater opportunities for more effective competition among the networks in

²⁵ *Home Shopping*, 4 FCC Rcd at 2423.

²⁶ *Review of the Commission’s Regulations Governing Programming Practices and Broadcast Television Networks and Affiliates*, Notice of Proposed Rulemaking, 10 FCC Rcd 11951, 11964-65 (1995) (“Network/Affiliate NPRM”).

²⁷ *Id.*

²⁸ *Id.* at 11967.